

Superseded 5/10/2016

73-4-3 Notice and procedure for general adjudication of water rights -- Survey of water source -- Statements of claim -- Incomplete records.

- (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person claiming the right to use the waters of any river system, lake, underground water basin, or other natural source of supply that involves a determination of the rights to the major part of the water of the source of supply or the rights of 10 or more of the claimants of the source of supply, the clerk of the district court shall notify the state engineer that a suit has been filed.
- (2)
 - (a) The state engineer then shall, for each general adjudication area, division, or subdivision, give notice of commencement of action to the claimants by publishing notice:
 - (i) once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants; and
 - (ii) in accordance with Section 45-1-101 for two weeks.
 - (b) The notice of commencement of action shall state:
 - (i) an action has been filed;
 - (ii) the name of the action;
 - (iii) the name and location of the court in which the action is pending; and
 - (iv) the name or description of the water source involved.
 - (c) The state engineer shall file proof of the publication of notice of commencement of action with the district court.
- (3) The state engineer shall, for each general adjudication area, division, or subdivision, search the records of the state engineer's office to locate all possible claimants, and continue to update the records during the adjudication and search for additional claimants.
- (4) In accordance with Section 73-4-4, the state engineer shall serve a summons to each claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.
- (5)
 - (a) After serving summons to a claimant, the state engineer shall give notice of further proceedings to:
 - (i) the claimant; and
 - (ii) an attorney who enters an appearance in court for the claimant.
 - (b) A court order is not required as a prerequisite for giving notice under Subsection (5)(a).
 - (c) The state engineer shall give the notice described in Subsection (5)(a):
 - (i) electronically, if the state engineer can verify the claimant's receipt;
 - (ii) by mail;
 - (iii) by personal service; or
 - (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.
 - (d) Notice given by mail is complete when the notice is mailed.
- (6) Except as provided in Subsection (8)(d)(ii), if the state engineer serves a notice required by this chapter, the state engineer shall, before the day on which the final decree for the general adjudication area, division, or subdivision is filed, file with the clerk of the district court a certificate of service that contains the name and address of the claimant served with the notice.
- (7) After publishing notice of commencement of an action, the state engineer shall:
 - (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting water from the water source; and
 - (b) hold a public meeting in the survey area to inform a water right claimant of the survey.
- (8)

- (a) After the survey described in Subsection (7) is complete for a claimant, the state engineer shall give notice, in accordance with Subsection (5), of completion of survey to the claimant.
- (b) Notice of completion of survey shall include:
 - (i) a statement that:
 - (A) the state engineer has investigated the claimant's water right; and
 - (B) a claimant who desires to claim a water right in the action shall, in accordance with Section 73-4-5, submit a written statement of claim within 90 days after the day on which the notice is issued; and
 - (ii) a statement of claim form that the claimant must complete in order to comply with the provisions of Section 73-4-5.
- (c) A claimant served with a notice of completion of survey who desires to claim a water right in the action shall file a written statement of claim in accordance with Section 73-4-5.
- (d)
 - (i) The state engineer shall compile the statements of claim described in Subsection (8)(c) and file them with the clerk of the district court.
 - (ii) If the state engineer files a claimant's statement of claim with the district court in accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of service that relates to the notice of completion of survey for that claimant.
- (9) When a suit has been filed by the state engineer as provided by Section 73-4-1, or by any person involving the major part of the waters of any river system, lake, underground water basin, or other source of supply, or the rights of 10 or more of the water claimants of the source of supply, whether the suit is filed prior to or after the enactment hereof, the state engineer, upon receiving notice, shall examine the records of the state engineer's office with respect to the water source involved, and if they are incomplete to make such further investigation and survey as may be necessary for the preparation of the report and recommendation as required by Section 73-4-11.
- (10) In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.